

to obtain a summary trial. In any event, should that not be true, there is no injustice done to the public, or done to the individual, and there is no evil, from the point of view of the public prosecution, arising from allowing it to stand as an indictable offence. All that is lost is that there would be no option on the part of the prosecution to proceed otherwise than one is bound to proceed upon an indictable offence. I am sorry that I did not anticipate the raising of this question, which is quite a proper question for the hon. gentleman to raise, and that, not being provided with the Criminal Code, I am not in a position to speak more positively than I do. But, I feel confident that no injury would be done to anybody liable to be prosecuted for this offence by reason of its being made an indictable offence.

Mr. McKENZIE: I understand what the minister means but I can assure him that if he would look at the Code, and look more particularly into the procedure, he would see that there is liable to be a great injustice done to the party accused. If he is tried summarily, if he is not satisfied with the magistrate's decision he may appeal. That is a great satisfaction to anybody. If he is brought before a magistrate and he has to elect to be tried under indictment he has no appeal. I am sure the minister will understand that this is a very striking difference.

Mr. DOHERTY: It is a difference; but on the other hand the party accused has an option as between the two methods of trial. He will not be dealt with on a summary prosecution without an appeal except as the result of the exercise of his own option.

Mr. McKENZIE: Under this Act there are two things that he can do. The magistrate before whom he comes will have to send him up for trial to the Supreme court. He will have to explain to him that on a certain day the Supreme court is going to sit where he can be tried before a judge and a jury. He will have to say: "You have the option to forego that and be tried before me now if you consent to it." The accused says: "I prefer to go to the jury," or, "I consent to be tried before you." If he says that he consents to be tried before the magistrate, he is tried and whatever the decision of the magistrate may be there is no appeal from it. But, if he is tried summarily before a magistrate on an ordinary information, he can appeal in the ordinary way and, of course, the procedure

[Mr. Doherty.]

under which a man can appeal is a more popular and a better procedure in small cases of this kind.

Mr. DOHERTY: While I appreciate the value that may attach to an appeal, on the other hand, I think it deprives a man of trial by jury which is an inherent right. Then, to have him tried otherwise than by jury without regard to any consent of his own is perhaps a more serious thing. There should be a procedure which leaves it open to him to be tried by a jury or to have the trial before a magistrate without appeal. He has an opportunity and he has an option. If we make it a matter of summary trial simply, he will have to go before the magistrate. It is true, he will have an appeal to a judge of the higher court, but he will have to stand by the findings of the judge, he will be deprived of his trial by jury. While the penalties are not exceedingly heavy, the offence in itself is not in any way a minor one. It would be very undesirable to treat it as such. From the point of view of the class of people who will be liable to be charged with offences of this kind, people who may be in the very largest way engaged in this very important business of insurance, I do not think we should merely, because the penalty is not heavy, deprive them of the right to have a trial by jury if they so desire. I do not think it is much of a grievance that instead of being subjected absolutely, in the first instance, to the judgment of the magistrate—with the right of appeal, it is true—the accused is placed in a position where he may at his own option have the verdict of his peers or the judgment of the court but without an appeal.

Mr. McKENZIE: I see that the minister stands by the Act, but I wish to point out to him as a lawyer who has had a good deal of practice in matters of this kind, that to send a man up under an indictment is a very serious matter. If a man is brought up with a view to his being indicted under this Act he comes before the magistrate or he elects to take the privilege which the minister points out. Then the magistrate has to send him to jail. He applies for bail. The magistrate has no power to take bail. If he is brought before a magistrate under this Act and he says: "I will not agree to be tried summarily before you, I want to be tried by a jury," what must the magistrate do? He must send him to jail. If he is sent to jail he must